

Approved as Submitted: September 1, 2004

**CITY OF MORGAN HILL
JOINT SPECIAL AND REGULAR CITY COUNCIL
AND SPECIAL REDEVELOPMENT AGENCY MEETING
MINUTES – AUGUST 18, 2004**

CALL TO ORDER

Mayor/Chairman Kennedy called the special meeting to order at 5:37 p.m.

ROLL CALL ATTENDANCE

Present: Council/Agency Members Carr, Tate and Mayor/Chairman Kennedy
Arriving late: Council/Agency Members Chang (arrived during Closed Sessions) and Sellers (arrived at 7:15 p.m.)

DECLARATION OF POSTING OF AGENDA

Deputy City Clerk/Deputy Agency Secretary Malone certified that the meeting's agenda was duly noticed and posted in accordance with Government Code 54954.2.

City Council and Redevelopment Agency Action

CLOSED SESSIONS:

CLOSED SESSION:

1.

CONFERENCE WITH LEGAL COUNSEL - ANTICIPATED LITIGATION

Authority: Government Code Sections 54956.9(b) & (c)
Number of Potential Cases: 4

2

CONFERENCE WITH LEGAL COUNSEL - EXISTING LITIGATION:

Legal Authority: Pursuant to Government Code 54956.9(a)
Case Name: San Jose Christian College v. City of Morgan Hill
Case Number: Ninth Circuit Court of Appeal, No. 02-15693

3.

CONFERENCE WITH LEGAL COUNSEL - EXISTING LITIGATION

Authority: Government Code section 54956.9(a)
Case Name: Klaver v. City of Morgan Hill
Case Number: WCAB SJO 241834; San Jose Board
Attendees: City Manager, City Attorney, Human Resources Director

4.

CONFERENCE WITH REAL PROPERTY NEGOTIATORS

Legal Authority: Government Code 54956.8
Property: 215 Tennant Avenue, APN: 817-04-002
Negotiating Parties:
 For City: City Manager, Director of Public Works, City Attorney, and Attorney Gale Connor
 For Property Owners: Robert and Teresita Carrasco and Bruce Tichinin

Closed Session Topic/Under Negotiation: Price and Terms of Payment

OPPORTUNITY FOR PUBLIC COMMENT

Mayor/Chairman Kennedy opened the Closed Session items to public comment. No comments were offered.

ADJOURN TO CLOSED SESSION

Mayor/Chairman Kennedy adjourned the meeting to Closed Session at 5:38 p.m.

RECONVENE

Mayor/Chairman Kennedy reconvened the meeting at 7:02 p.m.

CLOSED SESSION ANNOUNCEMENT

City Attorney/Agency Counsel Leichter announced there were no reportable actions.

SILENT INVOCATION

Mayor/Chairman Kennedy invited all those present to join in a silent invocation.

PLEDGE OF ALLEGIANCE

Mayor/Chairman Kennedy led the Pledge of Allegiance.

PRESENTATIONS

Ms. Kriss Costa, County Community Resources Specialist from Santa Clara County Vector Control District, presented a report on the status of West Nile virus in Santa Clara County. She stated that this disease cannot be spread by casual contact. Those at high risk are persons over 50 years of age, and those with a compromised immune system. Only 20 % of persons infected will show mild to moderate symptoms. Of those, less than 1% will have the most severe reactions of swelling of the brain and spinal column, paralysis and possible death. She stated that the County wants people to be concerned, but not panicked. To date, there have only been 189 human cases in California, with 5 deaths, which occurred in southern California. She stated that the disease is spreading quickly through the state. She reported that the disease does affect horses, and since our area has a large equine population, she recommended that horse owners have their animals vaccinated as soon as possible. This vaccine is 95% successful in preventing the disease in horses.

She reported that the pattern for the spread of the disease is that it first appears in the wild bird population, then horses, then humans. They have found 8 infected birds in the County, and they were widely scattered throughout the county, which leads them to believe these were migratory or transitory birds. So far, no infected mosquitoes have been found through testing, but once the disease affects the mosquito population, then it is here to stay.

The County Vector control is focusing on the West Nile Virus. They are treating all known sources for mosquitoes, all sources reported by citizens, and trapping and testing adult mosquitoes on a weekly basis. The County is requesting that residents do all they can to assist in fighting this disease by eliminating any sources of standing water; calling Vector Control about abandoned pools or spas that need to be treated; calling if they are being bothered by mosquitoes so they can be eliminated; and by being proactive in sweeping away any water they see standing in gutters or streets. They can also report any dead birds, but only the following species: Ravens, crows, jays, magpies, and all birds of prey. The birds cannot have been dead for more than 48 hours. Citizens can obtain a copy of the protocol for handling the birds, and do not need to be concerned about contracting the disease through handling the dead birds. Bird collection and testing will only continue until the disease starts showing up in the mosquito population; then they will focus entirely on mosquitoes.

She provided the following contact information:

State dead bird hotline: 877-968-2473

Online: www.westnile.ca.gov

Santa Clara County Vector Control District: 408-792-5010.

Mayor Kennedy asked staff to place this information on the City's website.

CITY COUNCIL REPORT

Mayor Kennedy reported on the Coyote Valley Committee, made up of officials from local agencies with a stake in the planning of Coyote Valley, as well as citizens that live in Coyote Valley; and providing a forum for expression of concerns for development of Coyote Valley. He reported that this local group has held three meetings; and he has also been attending Task Force meetings and the workshops of San Jose to provide input to them.

He reported that recently the local stakeholders group produced a letter that was sent to San Jose Mayor Gonzales identifying major local issues affected by Coyote Valley development; i.e. traffic, transportation, housing, schools and college, public facilities such as parks and recreational facilities, greenbelt establishment, air quality, communications, San Martin Airport, and regional health care facilities. They have requested a strong response to these issues and asked for mitigation measure from the City of San Jose to address these serious concerns.

The Subcommittee of that group will meet with Mayor Gonzales on August 25; and there will also be another stakeholder meeting on that date at 4 p.m. at the Community and Cultural Center, if anyone wishes to attend.

CITY MANAGER REPORT

City Manager Tewes reported that he had no report this evening.

CITY ATTORNEY REPORT

City Attorney Leichter was not available on the dais to make a report at this time.

OTHER REPORTS

Council Member Carr reminded the public that school starts next week, and to be sure to watch for children on the streets. He also noted that the new Sobrato High School will be opening on August 24th.

PUBLIC COMMENT

Mayor/Chairman Kennedy opened the floor to public comments for items not appearing on this evening's agenda. No comments were offered.

City Council Action

CONSENT CALENDAR:

Action: *On a motion by Council Member Tate and seconded by Council Member Sellers, the City Council unanimously (5-0) **Approved** Consent Calendar Items 1 – 5, 7-21, and 23, as follows:*

1. **AMENDMENT TO AGREEMENT WITH THE LAW FIRM OF JORGENSEN, SIEGEL, McCLURE & FLEGEL, LLP.**
***Action:** **Authorized** the City Manager to Execute an Amended Agreement with the Law Firm of Jorgenson, Siegel, McClure & Flegel, LLP.*
2. **SECOND AMENDMENT TO AGREEMENT WITH THE STROMBOTNE LAW FIRM.**
***Action:** **Authorized** the City Manager to Execute a Second Amendment to Agreement with the Strombotne Law Firm.*
3. **SUBDIVISION APPLICATION, SD-04-09: MISSION VIEW DRIVE-MISSION RANCH.**
***Action:** **Took No Action**. Thereby Concurring with the Planning Commission's Decision Regarding Approval of the Subdivision Map.*
4. **SUBDIVISION APPLICATION, SD-04-10: PEET-LUPINE.**
***Action:** **Took No Action**. Thereby Concurring with the Planning Commission's Decision Regarding Approval of the Subdivision Map.*
5. **RESIDENTIAL DEVELOPMENT CONTROL SYSTEM (RDCS) 2004 QUARTERLY REPORT #2.**
***Action:** **Accepted** and **Filed** the RDCS Second Quarter Report for 2004.*
6. **MONTEREY HIGHWAY SOCCER PARK UPDATE.**
***Action:** **Considered** the Status Report.*

Council Member Chang requested a status report on the Soccer Park from Recreation and Community Services Division Manager Spier.

Ms. Spier stated that this complex will be located adjacent to Sobrato High School. The Monterey Highway Soccer Foundation is in charge of the construction and maintenance of this facility.

The EIR should take about one year to complete, with construction possibly starting in August of 2005. The organization will be moving everything from the current soccer field location to the new fields. They are hopeful that they will be able to continue their parking agreement with the City of San Jose to continue to use the easement for parking.

The City of San Jose has budgeted \$300,000 for the EIR and we have budgeted \$1 million in our CIP budget for the project.

We should receive an updated schedule and business plan from the Foundation by the middle of September.

Council Member Carr expressed concern about the manner in which the City of Morgan Hill is portrayed in the report provided in the agenda packet. He does not like the implication that the City of Morgan Hill is dislocating them, and that the million dollars we have set side is our way of compensating for these actions. This is not accurate and he would like this to be rectified. The City of Morgan Hill is putting a vast majority of the funding into this project and should be better represented in their reports. He also wanted to make it clear that the lease ends this calendar year, and the relocation needs to be settled sooner than December 30, 2004 to avoid problems.

City Manager Tewes stated that the Parks and Recreation Commission will be holding discussions with them and reporting to the Council this fall.

Council Member Carr asked if the Beals Preferred Concept has been approved by the City of San Jose.

City of San Jose Council Member Charlotte Powers was present, and responded that this has not yet been approved as the City of San Jose keeps reviewing the plans and making changes. The City of San Jose has approved the 25 year lease, and the main access from Monterey Road.

Council Member Sellers asked if there would be a more formal presentation made to the Morgan Hill City Council. He stated that Morgan Hill has designated the million dollars, but the Council is awaiting clarification of how these funds are to be used so we can determine if this is how this council wants to spend the funds. In order to do this we need a more substantive report from San Jose.

Council member Powers stated that they would be happy to prepare and present that type of formal presentation, and apologized to Council Member Carr for the representation of the City of Morgan Hill that he noted in the report. She also stated that the group that has been formed is a group of soccer leagues, not necessarily all CYSA, which has been established as a legal entity to be the party responsible for the operation, management and construction of this site.

City Manager Tewes stated that the report is correct in its statement that the City of Morgan Hill will require an executed agreement with the Foundation before the foundation can proceed.

Mayor Kennedy thanked Councilwoman Powers for coming to address the City Council on this issue at tonight's meeting.

7. **APPROVAL OF IMPROVEMENT AGREEMENT FOR THE GRANARY.**
*Action: **Approved** the Improvement Agreement and **Authorized** the City Manager to Sign the Agreement on Behalf of the City of Morgan Hill with Charles Weston and Lesley Miles.*
8. **APPROVAL OF IMPROVEMENT AGREEMENT FOR ST. CATHERINE'S DAY WORKER CENTER.**
*Action: **Approved** the Improvement Agreement and **Authorized** the City Manager to Sign the Agreement on Behalf of the City of Morgan Hill with Charles Weston and Lesley Miles.*
9. **FINAL MAP ACCEPTANCE FOR ALICANTE PHASE I (TRACT 9578).**
*Action: 1) **Approved** the Final Map, Subdivision Agreement and Improvement Plans; 2) **Authorized** the City Manager to Sign the Subdivision Improvement Agreement on Behalf of the City; and 3) **Authorized** the Recordation of the Map and the Subdivision Improvement Agreement Following Recordation of the Development Improvement Agreement.*
10. **AWARD OF CONTRACT FOR SIDEWALK ADDITION AT EDMUNDSON/MONTEREY PROJECT.**
*Action: 1) **Awarded** Contract to Link Construction Co., Inc. for the Construction of the Sidewalk Addition at Edmundson/Monterey Project in the Amount of \$63,120; and 2) **Authorized** Expenditure of Construction Contingency Funds, Not to Exceed \$6,312.*
11. **APPROVAL OF PAYMENT TO SANTA CLARA COUNTY FOR VEGETATION ABATEMENT ON CITY-OWNED PROPERTY.**
*Action: **Approved** Payment in the Amount of \$47,006.43 for Vegetation Abatement in Fiscal Year 2004-2005.*
12. **ADOPT RESOLUTION APPROVING APPLICATION FOR 2005-2006 FEDERAL SURFACE TRANSPORTATION PROGRAM FOR STREET RESURFACING FUNDING.**
*Action: **Adopted** Resolution 5836, supporting the Application for Federal Surface Transportation (STP) Funding for the 2005-2006 Pavement Resurfacing Program.*
13. **YEAR END REPORT ON 2003-2004 WORKPLAN.**
*Action: **Accepted** Report.*
14. **APPROVAL OF ANNUAL LANDSCAPE MAINTENANCE SERVICES AGREEMENT FOR THE COMMUNITY AND CULTURAL CENTER AND AQUATICS CENTER.**

Action: 1) **Approved** Annual Landscape Maintenance Agreement for the Community/Cultural Center and the Aquatics Center; and 2) **Authorized** the City Manager to Execute the Agreement on Behalf of the City, Subject to Review and Approval by the City Attorney.

15. **AMEND CONTRACT FOR THE TENANT IMPROVEMENTS BY TRI-SIGNAL INTEGRATION, INC. FOR THE NEW POLICE FACILITY.**

Action: **Authorized** the City Manager to Amend and Approve an Additional Purchase Order for the Purchase and Installation of Card Readers, Closed Circuit TV, Fire and Security Alarm Systems Purchased for the Tenant Improvements at the New Police Facility, Subject to City Attorney Review and Approval.

16. **APPROVE FIRST AMENDMENT TO ARCHITECTURAL CONSULTANT AGREEMENT FOR INDOOR RECREATION CENTER.**

Action: **Authorized** the City Manager to Amend Noll & Tam's Consultant Agreement for an Additional \$35,000 for FF&E Selection, Specification, and Drawings and to Revise the Consultant's Scope of Work for Architectural Services Needed in Lieu of LEEDS Design, Subject to City Attorney Review and Approval.

17. **APPROVE AUDIOVISUAL CONSULTANT AGREEMENT FOR INDOOR RECREATION CENTER.**

Action: **Authorized** the City Manager to Negotiate, Prepare and Execute the Professional Services Agreement for Audiovisual Consultant, Lewitz and Associates for Consulting Required at the Indoor Recreation Center, Subject to City Attorney Review and Approval.

18. **ADOPT ORDINANCE NO. 1685, NEW SERIES.**

Action: **Waived** the Reading, and **Adopted** Ordinance No. 1685, New Series, and **Declared** That Said Title, Which Appears on the Public Agenda, Shall be Determined to Have Been Read by Title and Further Reading Waived; Title as Follows: **AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL APPROVING AN AMENDMENT TO ORDINANCE NO. 1487, NEW SERIES, TO AMEND THE DEVELOPMENT AGREEMENT FOR APPLICATION MP-97-22: SPRING – MALONE/FILIPOWICZ TO ALLOW FOR A ONE YEAR EXTENSION OF TIME FOR A SINGLE CUSTOM LOT BUILDING ALLOTMENT RECEIVED IN THE 1998-99 RDCS COMPETITION. (APN 767-53-012).**

19. **ADOPT ORDINANCE NO. 1689, NEW SERIES.**

Action: **Waived** the Reading, and **Adopted** Ordinance No. 1689, New Series, and **Declared** That Said Title, Which Appears on the Public Agenda, Shall be Determined to Have Been Read by Title and Further Reading Waived; Title as Follows: **AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL APPROVING AN AMENDMENT TO THE PRECISE DEVELOPMENT PLAN FOR THE DE PAUL (FORMERLY SAINT LOUISE) HEALTH CENTER INCORPORATING UP TO A 70-UNIT CONGREGATE CARE FACILITY, 94 UNIT ASSISTED LIVING FACILITY, A 6,050 SQUARE FOOT CHILD CARE FACILITY AND A 13,560 SQUARE FOOT COMMERCIAL OFFICE BUILDING. (APNs 728-031-005, 006, 012 & 013).**

20. APPROVED MINUTES FOR SPECIAL CITY COUNCIL MEETING OF JUNE 26, 2004.

Redevelopment Agency Action

CONSENT CALENDAR:

Action: *On a motion by Agency Member and seconded by Agency Member, the Agency Board unanimously (5-0) Approved Consent Calendar Items , as follows:*

21. DOWNTOWN PARKING RESOURCES MANAGEMENT PLAN.

Action: *Authorized the Executive Director to Negotiate and Execute a Contract with DKS Associates in an Amount Not to Exceed \$49,280, Subject to Agency General Counsel Review and Approval.*

City Council and Redevelopment Agency Action

CONSENT CALENDAR:

Action: *On a motion by Council/Agency Member Tate and seconded by Council/Agency Member Sellers, the City Council/Agency Board unanimously (5-0) Approved Consent Calendar Items 21, as follows:*

22. APPROVED MINUTES FOR JOINT SPECIAL AND REGULAR CITY COUNCIL AND SPECIAL REDEVELOPMENT AGENCY MEETING OF JULY 21, 2004, AS AMENDED.

Council Member Sellers requested that the City Clerk amend these minutes to add the following statement to page 13, paragraph 3: “Council Member Sellers also commented that he had requested to be the initial speaker on the item because he had not had a chance to weigh in on this issue.”

23. APPROVED MINUTES FOR JOINT REGULAR REDEVELOPMENT AGENCY, SPECIAL CITY COUNCIL, AND SPECIAL FINANCING AUTHORITY COMMISSION MEETING OF JULY 28, 2004.

City Council Action

CONSENT CALENDAR:

Action: *On a motion by Council Member Carr and seconded by Council Member Sellers, the City Council unanimously (4-0, with Tate absent) Approved Consent Calendar Item 24, as follows:*

24. APPROVAL OF JOINT USE AGREEMENT FOR WEST LITTLE LLAGAS CREEK TRAIL.

Action: **Approved** *Joint Use Agreement with Santa Clara Valley Water District for West Little Llagas Creek Trail.*

City Council Action

PUBLIC HEARINGS:

25. ZONING AMENDMENT, ZA-04-07: DIGITAL-VENTURE PROFESSIONAL CENTER
(Continued from 7/28/04).

Planning Manager Rowe presented the staff report as provided in the agenda packet.

Council Member Carr asked what the objection was which caused the NO vote at the August Planning Commission meeting.

Mr. Rowe explained that the objection was to the incorporation of the medical uses and the conversion of land to non-industrial. One Planning Commissioner did not agree with this.

In response to a question by Council Member Carr, Mr. Rowe explained that all currently pending requests for conversion of industrial land were considered in staff's calculation of the loss of one year's worth of industrial land.

Mayor Kennedy opened the public hearing and asked if the applicants, Mr. Rob Eves and Mr. Brian Kelly, would like to be the first to speak on this item.

Mr. Eves presented the Council with copies of research he has done on the current vacancy rate of space in Silicon Valley, and stated that the current vacancy rate is the highest in history and is equivalent to 40 of the San Francisco Bank of America towers standing vacant. He stated that local brokers estimate it will take 20 to 25 years before Morgan Hill's vacant industrial land is absorbed, so he feels that his small building will have very little impact.

On the issue of the MRI and surgery center, Mr. Eves stated that he has met with both De Paul and O'Connor Hospital, and they have asked him to remove these facilities from his plan. They told him that they may be able to bring a surgery center to Morgan Hill in about 1 year; so at their request, and in the interests of moving his application forward, he did remove the surgery center from his plans. He left the MRI Imaging Center in because the 20 or so doctors he is trying to attract to his facility have told him that the MRI center is a key component for their decision to locate in his facility. He urgently requested that the MRI not be pulled from his application as that would have a very adverse impact on the project as a whole. This use is allowed under current zoning codes, and this project has been approved by the Planning Commission twice. He requested that they approve this Medical Center application, and stated that he would be able to bring doctors and dentists to Morgan Hill immediately.

Andrew Barna, representing the Daughters of Charity Health Care System, stated that health care is a vital community resource, and he thanked the Council for taking the time to attend to the development of this very complex resource. He stated that physician offices are in the best interests of the community, and that this project's condominium style of offices would work great for physicians. He stated that the MRI and the ambulatory surgery center, however, would not be appropriate for this site. He reported that there are federal laws prohibiting physicians from referring patients to facilities in which they have a financial ownership/interest; and the question arises as to who would own this MRI facility. There is also a serious concern that services such as an MRI and ambulatory surgery are the revenue producing services of medical care which subsidize other less cost effective areas of medical services; and if you separate them out from the less cost effective services, the financial viability of a more comprehensive facility like De Paul Health Care will be affected in a detrimental fashion. He stated that the Federal Government has enacted legislation in the Medicare Modernization Act or the Medicare Prescription Drug Act which expressly prohibits the development of ambulatory surgery centers in specialty hospitals for a period of 18 months because of this detrimental impact that they have on other providers. Mr. Barna requested that the Council allow for the medical offices, but not the MRI Center or the ambulatory surgery center since these would not be in the best interests of health care services in Morgan Hill.

Joe Mueller, speaking on behalf of the Community Health Foundation, stated that the City Attorney has advised him he may have a conflict in speaking on this issue. He stated that he was unsure of whether to proceed with his statement.

City Attorney Leichter stated that she is unsure of Mr. Mueller's financial compensation from the Health Care Foundation and other entities, and she would need to discuss this with him in depth, as well as his role as a Planning Commissioner appearing before the City Council, in order to fully analyze the impact of these issues on this particular zoning hearing which the Council is considering this evening. She does not have the benefit of adequate time to do that analysis at this time, but she suggested that they take Mr. Mueller's comments and then, subject to her determination on the conflict of interest, Mr. Mueller can choose to have his comments stricken from the record or not.

Mr. Mueller stated he wanted to speak on just the ancillary services of this application and the impact they would have on the ability to deliver a broader range of services at the De Paul Health Center. There are only some services that make money, and these services allow a health provider to make available a broader range of services. If these profitable services are fragmented, then we won't get the range of services from a health care provider that we might otherwise receive. An MRI or surgery center are the two most profitable out patient services that are delivered, and so there would be a direct impact on the broad range of health services that could be potentially provided at the De Paul Center. He is not questioning that the "for sale" doctor's offices might be a benefit to Morgan Hill. He is questioning only the ancillary services. He questioned the necessity of these services being provided by this particular facility when these services can be provided, and are planned to be provided, at other locations in the city. The general welfare must be examined as well. If we reduce the overall availability of services because we have fragmented them by approval of this request, there may be a question about whether there is enough public benefit to grant this request.

Bernie Mulligan, representing the Morgan Hill Community Health Foundation, stated that he feels this is a critical juncture for Morgan Hill. He is pleased with the pace that the Daughters of Charity are moving forward. They have several occupants in their building already, and he believes that doctors like to be located near a hospital. He has no objection to the approval of the professional center for the physicians, but does object to this facility being given the money making operations that a hospital needs, which could then jeopardize the hospital. He opposes the project as presented, and if it is allowed to go forward it will extend the time for acute care to return to Morgan Hill.

George Chiala appeared as a concerned citizen. He stated that he did serve on the Morgan Hill St. Louise Task Force and worked hard to bring the De Paul Health Center as a provider to Morgan Hill. He is concerned that this MRI center would dilute the efforts already put forward on behalf of the De Paul Center. He is concerned about bringing in competition in the MRI area, which could cause problems for both entities. He asked for support for the efforts already put forward and requested that Council not allow the MRI center to be approved as part of this project. Even though there is a lot of empty space in Morgan Hill, we don't want to end up with an empty hospital. Approval of the MRI in this facility would take the profit center out of the hospital that supports those areas that are not so profitable.

Dick Oliver stated he recently had to take his grandson for emergency care, and had to drive to Gilroy to get it. Then he had to go to Los Gatos for an MRI. He is very anxious to get an MRI at the De Paul center. If the present zoning laws did allow an MRI for this project under discussion, this item would not even be before the Council this evening. He feels that Mr. Eves has made a good case for allowing doctors to be able to own their own offices at this site, and that there is a need and a benefit to the community in this; but he does not feel that there is a community benefit in the case of an MRI or surgical center at this project site. The MRI equipment is very expensive, and our community cannot support two such facilities. If we lose the chance to put the MRI at the De Paul facility, we will probably be delayed extensively in getting an urgent care facility there. He supported approval of the doctor offices as a clear benefit to the community, but not the MRI as part of this request.

Dr. Robert Moulthrop, a dentist in Morgan Hill, stated that he is very excited about the Venture Corp. proposal. He served on the St. Louise Community Advisory Committee before, during, and following construction of the hospital. He remembers that there was a great deal of volunteer work done by citizens and physicians to treat indigent residents, only to have St. Louise pull the rug out from under them when they chose to close their doors on the basis of a purely business move, leaving everyone here in a lurch. He feels that the notion that all health care services must be centered in the De Paul Health Center does a disservice to the community and is not in keeping with other businesses that have had to compete. He wants all businesses in this town to be successful; however, he feels that each one needs to be able to stand and succeed on their own. He feels that the opportunity to own their own buildings is a great opportunity for Morgan Hill physicians and will draw physicians to the area. He noted that De Paul has not even installed a permanent sign along Highway 101, and it is his belief that they are just testing the waters here and are ready to close their doors at a moments notice when life gets tough for them. He believes they have had ample time to install an MRI unit, but have not done so, and he questions why they have not done so. He has confidence in the Council's leadership that the Venture Corp will be allowed to proceed with their proposal, and that the Council will encourage future development of a surgery center at that same location.

Brian Kelly, applicant from Venture Corporation, stated that he feels that the Council cannot extrapolate the absorption of industrial land from the past into the future because it will not be an accurate picture. He has been meeting with doctors interested in their project, and feels that they like the idea of having an MRI easily accessible to them in their center. He reminded the Council that they have already removed the surgical center from their project. He feels that it is critical that the MRI and lab be allowed in their center, because many of the specialists have said they will not come to this building unless the MRI lab is there, and the MRI lab has said they won't come unless they have the specialists there. So they need each other to survive, and he encouraged the Council to allow the MRI center to remain a part of the project.

Glenda Garcia, representing the Community Health Foundation Board, stated she was also very involved in the founding of the St. Louise Hospital; and that even though the Daughters of Charity broke her heart when they left, they have now come back. She stated that we cannot have a hospital unless the hospital can make money, and she will not be able to take care of the sick and the poor unless the departments there are making money. Those money making departments are the lab and the MRI, and it needs to be in the hospital in order to serve the sick and poor of this community, which is what she cares the most about. She highly recommends to the Council that they make a decision that will allow the De Paul Health Center to be a success.

Mayor Kennedy offered Mr. Eves an opportunity at rebuttal. Mr. Eves declined to make further comment at this time.

No further comments being offered, the public hearing was closed.

Council Member Carr asked Planning Manager Rowe to review the zoning issue.

Mr. Rowe stated that the medical-dental testing laboratories are permitted uses in a light industrial, but those are the types of uses that don't provide patient care. The medical-dental offices are the reason this issue is before the Council this evening. Venture Corp. had come before the Planning Commission on September 9, 2003, for a Use Determination to ask them to consider if this proposed use was appropriate for this zoning district. The Planning Commission agreed that the MRI could be considered as a conditional use in the business park at that time, but an application was never submitted to actually obtain the Use Permit to approve the MRI facility. Instead that request came to the City packaged in the PUD amendment application that is before the Council this evening. Both the medical offices and the MRI facilities uses are not permitted under the current zoning, and can only be allowed through the amendment to the PUD. In regard to the discussion of an ambulatory surgery center, the Building Code would require the building to be classified as under institutional group 1 occupancy. As has been recommended by the Planning Commission to the Council, an ambulatory surgery center would be expressly prohibited at this time and would require further amendment to the PUD. The MRI facility is the recommendation of the majority of the Planning Commission.

Council Member Sellers asked Mr. Barna if there are plans for a similar facility to be built at the De Paul Health Center, and what the timeline for construction would be.

Mr. Barna responded that there are plans to include a comprehensive diagnostic imaging center at the De Paul Health Center, which does include an MRI. They are currently in the process of completing the business plan, which he believes will then be submitted in October to the Daughters of Charity Health System Board for approval. Upon a favorable outcome there, they would then begin the process of implementing their services. Services would take between 6 and 15 months to develop.

Mayor Kennedy asked Mr. Barna to clarify the new law that restricts doctors from operating an MRI facility.

Mr. Barna stated that the Medicare Modernization Act restricts physicians from owning specialty hospitals; such as the ambulatory surgery center. There are standing laws which restrict physicians from referring patients to designated health care services in which they have ownership interest; so those physicians that move into this medical office building could not refer patients to this MRI if they own the MRI.

Council Member Carr asked for an explanation of what it takes to operate an MRI facility.

Mr. Barna stated that the MRI is administered by a radiology technician and then the results are interpreted by a radiologist. The radiologist would be able to read this image off-site because of new technologies available. Then the radiologist writes his report and sends this to the physician. Mr. Barna also stated that the MRI is only one of a host of diagnostic procedures used by physicians to diagnose their patients.

Mayor Kennedy asked Mr. Eves, in regard to these laws, how they have dealt with this issue in their project.

Mr. Eves pointed out that this law was only established to stand for 18 months, so by the time the new facility is in place, this would no longer be an issue. He felt it does not apply to them, since they have withdrawn their application for a surgical center from their project, and no other aspect of their project would be impacted by this law.

Mr. Eves also questioned if there is a plan for an imaging center at De Paul Health Center. He stated that they told him they do have a plan, but do not have the money to proceed at this time. He was told that they would need something in the range of \$7 million dollars, and they have no funds or budget for it at this time. He stated that they have high hopes and grand goals, but it has been ongoing for a number of years with nothing happening. He also wanted to make the Council aware that, in the case of his proposed MRI facility, the applicant is a radiologist and will be on site to do the interpretation of all MRI's.

Mayor Kennedy stated he wished to disclose that he had met with the applicants, some of the doctors, and Mr. Barna and Joann Ellen of the O'Connor Hospital and De Paul Medical Center to hear arguments from both positions.

Council Member Chang stated that she also had met and held discussions with them. She also stated that she is not yet clear on the restrictions on physician investment in the specialty hospital. She asked if

she is correct in understanding that a physician cannot submit a claim to Medicare if he owns interest in the facility; and if the radiologist owns the building, can he submit the claim to Medicare?

Mr. Barna stated that the radiologist can submit a claim for his services to Medicare because he is not the referring physician. If the referring doctor has ownership interest in the facility, then that physician cannot refer any patients to that facility for services.

Mayor Kennedy asked City Attorney Leichter for clarification on a statement that she had made to him earlier today that competition and economics cannot be the basis for denial of a zoning change.

City Attorney Leichter stated that these cannot be the sole basis for a zoning decision. She stated that when making a zoning decision such as this, the Council is considering the broader general welfare of the community in determining where health services are placed within the community, whether they are clustered, whether they provide easy access to freeways, is there adequate parking, etc. There are issues that have been raised by Mr. Mueller, for example, that go beyond the pure economic interests. To the extent the Council would be making this decision that the MRI at De Paul would be economically unfeasible, and that would be the sole basis for their decision, she would advise against that. It needs to be based on more than that.

Council Member Sellers asked the City Attorney if it is within the Council's purview to approve the doctor office facility now, but to defer consideration of the MRI facility for a period of time.

Ms. Leichter stated that they can approve part of the project, or table part of it, and that would be within Council discretion. She suggested it may be more expeditious to simply deny it so that the applicant can pursue their appeal rights if they desire to do so.

Council Member Sellers, relating his remarks to the desire of many citizens to get a Trader Joe's in Morgan Hill, stated that the Council does not get to pick what will come to Morgan Hill; but, on occasion, they do get to decide what does not get to come to town. If the Council feels there is something that will not be for the betterment of the community the Council gets to act. As the City Attorney has pointed out, the decision cannot be a purely economic decision; and as he has often pointed out when one coffee shop gets upset because another coffee shop is moving into town, that it is not for the Council to just keep out competition. He stated that it appears obvious that we need an MRI facility in town, sooner rather than later, and that it is going to be a lynchpin for the development of Morgan Hill's health care facilities. This is evident from the discussion on both sides of this issue, and the Council's job is to figure out how to expedite that. He is inclined to give an opportunity to the De Paul Health Center to perform, because in the long term that seems to be in the best interests of the community since it would further healthcare and medical services. However, if we say we are not going to allow for the free market to place this facility in town through this project without any specific timeline commitment from De Paul, there is the potential for this to languish and we could end up three years from now without an MRI facility and perhaps relatively few doctors' facilities. It sounds to him as if the doctors who have shown interest are attracted by the new MRI facility, but he not convinced that it has to be at a specific location. It sounds to him like De Paul is going to have a plan by the end of the year; and if they can provide a plan that is substantive, with timelines and financing, that such a plan should give the Council confidence that there will be an MRI in place in the 9 to 15 month timeline indicated by Mr.

Barna, which would be the end of next year. That seems to be reasonable to him. It places pressure on De Paul to produce a document that says they are going to produce an MRI facility in a relative short period of time, so that Venture Corp. can use that to market their buildings to the doctors who might be interested in buying their buildings. He is not comfortable giving an unlimited carte blanche to De Paul to decide to build the MRI whenever they want. As good of neighbors as they have been over the last few months, they need to know we have been down this path before and we need some quantifiable landmarks produced. If they cannot do that, we can allow for this other facility to come to Morgan Hill.

City Attorney Leichter stated that if he is suggesting that if there is not an MRI at the De Paul center within “x” amount of time, the Council would allow the use at this site; then that could be accomplished by stating that this use will commence on “x” date if there is not already an MRI facility at another location within the City limits.

Council Member Tate stated that the Council had spent considerable time recently writing policies to protect Morgan Hill against what happened when we lost the hospital. This project could create a direct conflict, and the policy that they established was to steer around such conflicts. He stated that he liked Council Member Seller’s suggestion. The City has put everything behind the Community Health Foundation, and now we have a competing offer to bring doctors into town, which was always the highest priority. Everybody agrees that we need to support both efforts to bring doctors into town, but that there could be the element of competition that drives one or the other, or both, out of business if we go both ways. This is what the Council has been trying to avoid. The problem is that if we put all of the support behind De Paul, and they tell us that they might be able to do something in 15 months, we could lose the opportunity offered by this project to have a radiologist in town who is ready to come right now. He is supportive of Greg’s idea that we need to insist that De Paul perform, and to give them some time to do that; while at the same time not blocking this project entirely in case De Paul does not perform.

Council Member Carr agreed that this is a great suggestion. He feels that competition is going to get us where we want to be, and the competition brought by this proposed project allows the City to hold De Paul’s feet to the fire, to back up the Community Health Foundation with the work they have been doing, and finally have something to bring De Paul to the table and give them a certain amount of time to perform. We need to give them some time to figure out how they are going to perform, but he is not sure that giving them until the end of the year is a good idea, since that may be too much time. He would like to move forward as quickly as we can on the office portion of this project. He was concerned about the loss of industrial land, but Mr. Rowe pointed out that it is not going to be that much of a loss. He understands that moving forward with just a part of this project may change the economics of the project, but he does not want to hold up the doctors’ offices while the city works on this timeline with De Paul on the MRI. He feels that this partial approval to allow the offices is what the Council should do this evening.

Mr. Barna was asked to comment on the timeline for the Daughters of Charity. He stated that he is hesitant to make time commitments for them, but that this does sound like a potential idea for resolving this situation. The current time frame is to take this proposal to the Daughters of Charity Board in October or November. He wants to be sure to give them enough time, but certainly by the end of the year they will have an idea and a direction of the very specific services that they will be implementing in

the De Paul Health Center, and the construction timeline that will indicate when they will be able to open the services.

Mayor Kennedy asked him if the Council does approve this project tonight, with the MRI being conditioned on Daughters of Charity decision to proceed with the MRI by November, would that be something he could provide an answer to, or would he have to go back to the Daughters of Charity Board for a response in December.

Mr. Barna stated that he would have to work with the architects and construction staff to be able to give the Council a more definite timeline of when that phase of construction would occur. He does not know that diagnostic imaging would be the first thing they would choose to implement. An urgent care center might be their first priority, and the MRI might be in the 6 to 12 months timeline. What they will be able to tell the Council by the end of this calendar year is what services they do plan to provide at De Paul, and how they will be phased into service. The MRI may not necessarily be the first item to come on line; and though it could be, he is not in a position to make that commitment tonight.

Council Member Chang asked if it would be December 1st or 30th that the Daughters of Charity would provide an answer.

Mr. Barna stated that the Board meets at the end of November, and it would be difficult to report to the Council by December 1, so he feels that December 30 would be fairer. After the November meeting they could give the Council a definite timeline for the particular services they plan to provide at De Paul.

Mayor Kennedy stated that there is a need for these facilities, as demonstrated by the fact that there are two different business entities that are willing to go forward. The City has waited a long time for the Daughters of Charity to act, and in the offer of Venture Corporation, we essentially have a bird in the hand. It is very difficult not to accept this offer, but he is willing to support a compromise solution which allows the medical office building to go forward while giving the Daughters of Charity a deadline of December 31 to say yes or no on the MRI. If the answer is not within a reasonable, committed time frame, then we would proceed with the MRI at the Venture project.

Mr. Eves commented that the Council's comments are clear and understandable, and he would support their idea, even if this goes into January 2005. It will clearly adversely impact the marketing outreach to the medical community, but they will live with that. The only question he would ask is what exactly happens on December 31? If De Paul says yes, when would they build it? If they say no, does that mean they are not going to ever build it, or just not this month? He can agree to waiting until the end of the year, provided that De Paul will step up and provide written notice that they agree to build, and commit unconditionally within a limited time frame to do so. Also, what will they provide as a guarantee that they will build the MRI facility, so that Venture Corp. does not lose the doctors they already have line up to come here.

Mayor Kennedy stated that the City would have to have a legally binding agreement from them.

City Attorney Leichter stated that to make the expectations clear for all parties, the Daughters of Charity Board needs to prepare a substantive plan acceptable to the Council with deadlines and financing to

build an MRI by a certain date. When the Council considers what they present in December, then they can decide if it is acceptable, or decide that it is not substantive enough, at which point the zoning decision can be reconsidered.

Council Member Carr asked Mr. Eves if the building they are proposing needs to go through a State approval process.

Mr. Eves responded that the building did not require State approvals.

Council Member Carr asked how quickly they could be up and running if, in January, the Council approves the building Venture Corp. is proposing.

Mr. Eves stated that, assuming the office building is approved tonight, he would guess 90-120 days from now they would be under construction, and it would take about 6 months to complete the building, which puts them around May, 2005. That means 9-10 months from today the doctors and dentists would be moving in.

Council Member Tate asked for more discussion on the timeline. He stated he is not happy with waiting until the end of the year for the response from De Paul, and would like to request their response by the end of November. If that means they have to have extra meetings to make their decisions, then that is what they have to do.

Council Member Sellers stated that there are significant deadlines here. The Daughters of Charity need to commit that they are going to build an MRI, in a reasonable time frame, and identify the money to do so. All this needs to happen as quickly as possible, with the understanding that as an institution they have things they have to deal with. He would also hope that Mr. Barna can convey to them that the Council is considering a variety of options in terms of how the city will proceed, and that De Paul may want to modify their business plan so that the MRI is expedited. It would also be helpful if they could provide some type of written communication of their plans to build the MRI which can be given to the doctors as a marketing tool to draw them to Morgan Hill. All of this needs to occur this calendar year, with the key being how quickly the MRI can be expedited.

Council Member Carr stated that he agrees with Council Member Tate that this process needs to be stepped up and this is our opportunity to hold their feet to the fire on some things we have been talking about. He does not think it is too difficult to request that this be produced by the end of November or first of December. He stated we need to be clear about what we are asking for at that time. He disclosed that he too has met with the applicant and representatives of De Paul. It is his understanding that they are going to come back to the Council with a phasing plan of what they are going to be doing at both the medical office building and in the hospital structure itself. He is willing to wait on that plan. Even though we have a proposal for an MRI before us tonight, that may not be the first priority of De Paul. And when we consider what our public policies are in health care, an MRI may not be our first priority either. At least at the De Paul site. If they come back and tell us they can get an urgent care center up and running in three months, but it is going to take 18 months to get an MRI going, then it is a different discussion for the Council. He does not think we should be pushing De Paul to set the MRI as the first priority because we are not health care experts. He does want De Paul to know that Mr. Eves has stated

he can produce the MRI in 9 months, so they know that this is something that this community is very interested in and now has that option available in a stated timeline. We need to be careful what we are asking De Paul to provide on December 1. We will hear a plan of what they are going to do with the medical center and somewhere in that plan the MRI will be included. We will then have to decide if that is quick enough or not, and decide whether we want to go with the other proposal to change the zoning and allow someone else to compete in that market.

Mayor Kennedy agreed with Council Member Carr's comment, and stated that he does not want the message to go out that the number one priority is getting an MRI in Morgan Hill. We have indicated that our highest priority is getting urgent care and primary care physicians, and that may be the plan they come back with.

Mayor Kennedy suggested a motion to proceed with the zoning change to allow the medical office building, with the condition that the MRI facility be placed on hold for now. He asked the City Attorney for assistance with the correct wording.

City Attorney Leichter stated that there are four actions that need to be taken. First the public hearing needs to be closed. Then they need to adopt the Mitigated Negative Declaration. When Council gets to actions on the ordinance, the approval would be conditioned, as she understood the Council Member's various ways of stating this, that the De Paul Health Center should come back to the Council by the end of November with a plan which demonstrates when they will install an MRI, the financing, and that demonstrates a substantive plan to achieve those goals. The approval of the zoning would be conditioned on this occurring. It would be the sole discretion of the Council as to whether that plan by De Paul is acceptable. If it is not acceptable, the Council could reconsider the zoning on the MRI, unless Council just wants to have a de facto approval of the MRI at the Venture Professional Center.

Council Member Sellers stated that he feels it is important that the Council give reconsideration at that point because there are too many variables.

Mayor Kennedy closed the public hearing.

Action: *On a motion by Council Member Tate and seconded by Council Member Carr, the City Council unanimously (5-0) **Approved** the Mitigated Negative Declaration.*

Action: *On a motion by Council Member Tate and seconded by Council Member Sellers, the City Council unanimously (5-0) **Directed** Staff to agendize an amended ordinance consistent with the Council's direction on the next Council meeting agenda.*

Action: *On a motion by Council Member Carr and seconded by Council Member Tate, the City Council unanimously (5-0) **Directed** Staff to agendize the response from De Paul Health Center on the December 1, 2004 meeting.*

Mr. Eves asked for verification that the MRI imaging center has not been included in the approval this evening, but perhaps could be approved at the meeting in December; and that the doctors' offices have

been approved and Venture Corp. can go forward with architectural review. And finally, is it approved for them to include an ordinary medical laboratory in the medical building?

The Council did confirm for him that he is correct.

26. PROTEST, PRO-04-03: ANNEXATION, ANX-03-01: HILL-GERA.

Planning Manager Rowe presented the staff report as provided in the agenda packet.

Mayor Kennedy asked if there was anyone present to protest this annexation. Since no one spoke in protest of this annexation, Mayor Kennedy stated that the Council action required was to terminate the annexation protest proceeding, and allow the annexation to proceed.

City Attorney Leichter stated that the Council did not need to adopt the resolution before them which contains reference to the assessed land value, but there needed to be a motion to terminate the proceedings and allow the annexation to proceed.

No further comments being offered, the public hearing was closed.

Action: *On a motion by Mayor Kennedy and seconded by Council Member Tate, the City Council unanimously (5-0) **Terminated** the Protest Proceeding, and **Allowed** the annexation to proceed.*

**27. DEVELOPMENT AGREEMENT AMENDMENT, DAA-03-12: PEET-LUPINE.
Ordinance No. 1690, N.S.**

Planning Manager Rowe presented the staff report as provided in the agenda packet.

Mayor Kennedy opened the public hearing.

Mr. Dick Oliver, the applicant, stated that he was present if the Council had any questions for him. The Council had no questions.

No further comments being offered, the public hearing was closed.

Action: *On a motion by Council Member Tate and seconded by Council Member Carr, the City Council unanimously (5-0) **Waived** the Reading in Full of Ordinance.*

Action: *On a motion by Council Member Tate and seconded by Council Member Chang, the City Council **Introduced** the Ordinance, by Title Only, as follows: **AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL APPROVING AN AMENDMENT TO ORDINANCE NO. 1660, NEW SERIES, AMENDING THE DEVELOPMENT AGREEMENT FOR APPLICATION MP-02-12: PEET – LUPINE INVESTORS/BORELLO (APNs 728-34-002 & -003) by the following roll call vote: AYES: Carr, Chang, Kennedy, Sellers, Tate; NOES: None; ABSTAIN: None; ABSENT: None. Ordinance No.1690, N.S.***

28. DEVELOPMENT AGREEMENT AMENDMENT APPLICATION, DA-03-13: MISSION VIEW DRIVE-MISSION RANCH. Ordinance No. 1691, N.S.

Planning Manager Rowe presented the staff report as provided in the agenda packet.

Mayor Kennedy opened the public hearing.

Mr. Dick Oliver, the applicant, stated that he was present if the Council had any questions for him. The Council had no questions.

No further comments being offered, the public hearing was closed.

Action: *On a motion by Council Member Tate and seconded by Council Member Sellers, the City Council unanimously (5-0) **Waived** the Reading in Full of Ordinance.*

Action: *On a motion by Council Member Tate and seconded by Council Member Sellers, the City Council **Introduced** the Ordinance, by Title Only, as follows: **AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL APPROVING AN AMENDMENT TO ORDINANCE NO. 1658, NEW SERIES, TO AMEND DEVELOPMENT AGREEMENT DA-03-13 FOR APPLICATION MP 02-15:***

MISSION VIEW-MISSION RANCH TO ALLOW FOR THE INCORPORATION OF 22 SUPPLEMENTAL BUILDING ALLOCATIONS AWARDED IN THE 2003 RDCS COMPETITION. (APN 728-32-008 & 009) by the following roll call vote: AYES: Carr, Chang, Kennedy, Sellers, Tate; NOES: None; ABSTAIN: None; ABSENT: None. Ordinance No. 1691, N.S.

29. ZONING AMENDMENT APPLICATION, ZA-04-04: CITY OF MORGAN HILL-CENTRAL COMMERCIAL RESIDENTIAL ZONING. Ordinance No. 1692, N.S.

Planning Manager Rowe presented the staff report as provided in the agenda packet.

Mayor Kennedy opened the public hearing.

No comments being offered, the public hearing was closed.

Council Member Sellers stated that he appreciated the Planning Commission's modification that allowed restaurants and entertainment uses, since those are uses the Council wants to encourage and considers an integral part of downtown development, especially on the Monterey corridor.

Action: *On a motion by Council Member Sellers and seconded by Council Member Tate, the City Council unanimously (5-0) **Waived** the Reading in Full of Ordinance.*

Action: *On a motion by Council Member Sellers and seconded by Council Member Tate, the City Council **Introduced** the Ordinance, by Title Only, as follows: **AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL APPROVING TEXT AMENDMENTS TO CHAPTER 18.24 (CENTRAL COMMERCIAL/RESIDENTIAL DISTRICT) OF TITLE 18 (ZONING) OF THE MUNICIPAL CODE OF THE CITY OF MORGAN HILL, by the following roll call vote: AYES: Carr, Chang, Kennedy, Sellers, Tate; NOES: None; ABSTAIN: None; ABSENT: None. Ordinance No. 1692, N.S.***

30. LIBRARY DEVELOPMENT IMPACT FEE ADJUSTMENTS. Resolution No. 5837.

Jack Dilles presented the staff report as provided in the agenda packet.

Mr. Dilles also reported that he had done an informal survey today by calling other cities in Santa Clara County to learn if they charged library impact fees. He had reached 9 cities, and learned that 8 of those do not have such fees. The only city with such fees is the City of Gilroy, and their fees of \$1,810 for a single family home and \$1,290 for a multi-family home, are significantly higher than those being proposed here tonight.

Council Member Carr asked Mr. Dilles how the calculation of the proposed fee took into account the fact this library will serve an area that is greater than the city limits of the City of Morgan Hill.

Mr. Dilles explained that the fees are based on the urban growth boundary, but nothing outside of that boundary. He explained the methodology used in determining the charges, and stated that he did not believe it would make a difference in the fees to reduce the area in which they are charging the fee.

Mayor Kennedy opened the public hearing.

No comments being offered, the public hearing was closed.

Action: *On a motion by Council Member Tate and seconded by Council Member Sellers, the City Council unanimously (5-0) **Adopted** the Resolution.*
Resolution No. 5837.

31. WATER SUPPLY SHORTAGE OPERATIONS PLAN. Resolution No. 5838.

Director of Public Works Ashcraft presented the staff report as provided in the agenda packet.

Mr. Ashcraft also reported that he had received letters this week from the Regional Water Quality Control Board that give hope of being able to run the Tennant well through a perchlorate removal system.

Mayor Kennedy opened the public hearing.

No comments being offered, the public hearing was closed.

Action: *On a motion by Council Member Carr and seconded by Council Member Tate, the City Council unanimously (5-0) **Adopted** the Resolution Implementing the Water Supply Shortage Operation Plan to Protect Public Health and Safety When Water Shortages Occur. Resolution No. 5838*

Redevelopment Agency Action

OTHER BUSINESS:

32. LIBRARY PROJECT CONSTRUCTION BUDGET.

Recreation and Community Services Division Manager Spier presented the staff report as provided in the agenda packet.

Mayor Kennedy stated he needed clarification on the allocation of the excess funds; specifically the costs for the additional parking needed at the aquatics center?

Ms. Spier stated that \$100,000 will be needed to construct the additional slide, leaving a need for approximately \$200,000 to provide an additional 40 parking spaces.

City Manager Tewes added that they are looking to place the parking spaces on the site just to the south of the existing improvements.

Mayor Kennedy asked if there is any way to provide this parking area on the Condit Road side, adjacent to where the future sports complex will be located, so that both facilities could share the parking area.

City Manager Tewes stated that this should be reviewed under the master plan that the Parks and Recreation Commission is pursuing.

Council Member Carr asked about the proceeds from the Abbott Lab loan that will be returning to the city and used for this project.

City Manager Tewes reported that when the subcommittee considered the funding strategy, they were told that there were certain loans due and payable in the near term during the time when this project would be developed. Those monies would be returned to the 80% fund of the Redevelopment Agency, and would be available for any allocation. There is also program income that comes in from time to time that had not been previously allocated, and the subcommittee is recommending that these funds be allocated to the library project.

Council Member Tate asked for clarification on the recommendation for approval of the schematic design.

Ms. Spier stated that the Council is being asked to approve just the basic footprint of a 28,000 square foot designed building, and then the Library Commission will be asked to come up with programming element details.

Chairman Kennedy opened the public comment.

Mr. Chuck Dillmann stated that the allocation of this excess money should be maintained in the library budget because the 28,000 square foot building is going to be too small. He stated that the quality of the cost estimate, based on a design that was done in a hurry, may turn out to be impossible to build for \$17 million. In addition, because of the uncertainty that has been experienced by the city in building its other facilities, he recommended that the full amount available be allocated to the library with a target budget of \$17 million, but holding a reserve to be used with appropriate justification.

No further comments being offered, the public comment was closed.

City Manager Tewes responded to Mr. Dillmann's comments. He stated that the 28,000 square foot size had been selected based on the standard of ½ square foot per capita, and this size represents the size of the library that will be required for the urban growth boundary build-out population. It is also 5,000 square feet bigger than the existing Community Center, so it is a very large facility. The budget allocation of \$17 million recommended this evening is \$400,000 larger than the estimate in order to allow a cushion for financing costs and delays. He stated he wanted to make it absolutely clear that the recommendation is that the guiding principal should be that the city will design and build the Library which the city can afford; and that what is built should cost no more than \$17 million. That means the

size of the building will be controlled by the budget, instead of the budget being controlled by the size of the building. This is a change in the approach to capital projects for the city.

Council Member Tate stated that he totally disagrees with that. The Council has taken \$400,000 away from this project and put it into the Indoor Recreation Center project, and staff is now suggesting that one of the possible uses of the excess funds is to put that toward the Indoor Recreation Center too. Yet, the Library is penalized to the point that we have to build to the budget. He stated that he just cannot agree with that. If we get down the road and find that our programming demands that we provide a few more square feet, we will be totally handcuffing ourselves if we say we are bound by the budget. He totally does not agree with that at all because we need some flexibility. He is totally behind going with a more rigorous process of construction control, but he does not believe that we should make a commitment like that up front and totally handcuff ourselves.

Mayor Kennedy asked that the Council consider each recommendation individually.

Action: *On a motion by Agency Member Tate and seconded by Agency Member Carr, the Agency Board unanimously (5-0) **Established** an Alternative Capital Improvement Project For a 28,000 Square Foot Library at the Civic Center Site with Potential Future Expansion of 10,000 Square Foot and a Budget of \$17 Million.*

Action: *On a motion by Agency Member Tate and seconded by Agency Member Chang, the Agency Board unanimously (5-0) **Approved** the Source of Funding to Finance the Project Construction Budget as Outlined in Exhibit A.*

Action: *On a motion by Agency Member Tate and seconded by Agency Member Chang, the Agency Board unanimously (5-0) **Directed** the Library Commission to Review and Develop a Program for a 28,000 Square Foot Building.*

Action: *On a motion by Agency Member Tate and seconded by Agency Member Chang, the Agency Board unanimously (5-0) **Approved** Seeking of Cooperation from the County in Imposing a Similar Development Impact Fee in the Unincorporated Area and **Directed** that a letter be sent to County Supervisor Don Gage to that effect.*

Action: *On a motion by Agency Member Tate and seconded by Agency Member Carr, the Agency Board unanimously (5-0) **Revised** the CIP to Illustrate the Revised Funding Allocations for the Storm Drainage Projects.*

Action: *On a motion by Agency Member Tate and seconded by Agency Member Sellers, the Agency Board unanimously (5-0) **Directed** the City Manager Analyze the Alternative Project Management Model and Prepare Recommendations for Council Consideration on Obtaining the Services of a Qualified Construction Management Firm and Architect and Report Back to Council in October 2004 when it is Anticipated the City Will Know the Results of the State Funding for the Larger Library Project.*

Council Member Chang stated she had a question on Recommendation #7, and asked if contingencies have been built into this budget.

City Manager Tewes stated that there are contingencies built in as well as the additional \$400,000 that was added for good measure.

Council Member Sellers stated that he supports Recommendation #7, and if we have additional resources they need to be identified, but we do need to have the budget be the controlling factor in this project. The Council spent a lot of time cutting back on the Indoor Recreation Center project, and yet they still needed to find an additional \$400,000 because they had to protect the production of income on the IRC project. The Library Project is a different dynamic because it is not dependent on generating income, and he feels that 28,000 square feet is a significant sized facility. If, in order to get it built within the budget, it needs to be reduced to 27,900 or 27,800 he is willing to live with that. If they had not already put in all the contingencies and the additional \$400,000 on top of that, then he would feel differently. He asked if there would be action this evening to designate the \$1.2 million.

Mayor Kennedy responded that he would make a recommendation that this decision not be made this evening, and Council Member Sellers agreed and stated that he just wanted to make sure that it was not being made this evening.

Council Member Carr commented that the city does not have “extra” money, and does not have \$1.2 million just laying around that the council needs to decide how to use. The \$18.2 million budget was created by finding areas where the Council could take money away from projects to put together for this budget. He believes the intent of the subcommittee in coming up with more money than they thought the project was going to cost was to cover the many mitigations that would have had to be taken dealt with if the site had ended up being in the downtown area. He agrees that the Council should not make the decision about those dollars tonight; but, when the decisions are made, they should not look for new things to spend these monies on, but return these monies to where they were taken from. The reason he is supporting making the budget be the controlling factor on this project, is because that is where The Council ultimately always try to be on a project. If there ends up being a need for more money, they try to figure out where that money comes from, and he feels that the library project should have to do that too. If this budget ends up needing another \$300,000 or \$400,000, the Council should consider it again and find out where those dollars will come from. We will have a budget, and then design to that budget; but if they find that the design just won’t work, the Council will have to decide where more money will come from.

Mayor Kennedy stated that the original library budget was about \$14 million; and now this budget is \$17 million, which is a substantial increase. In addition, he believes the City has become smarter in how they manage projects. He believes the contractor will be locked into a specific price, so there is better assurance that we will hit the budget we have set, and will allow projects to be built within budget. He stated he is in support of this motion, and feels that we need to move forward. The further discussion on the \$1.28 million should be delayed until there is additional information on the costs of the various alternatives, such as the cost of the downtown promenade or the cost of the aquatics center parking lot. There are a series of projects to be considered before that decision is made.

Action: *On a motion by Agency Member Sellers and seconded by Agency Member Carr, the Agency Board unanimously (4-1, with Tate voting No) **Directed** Staff that any Project Model Moved Forward will have the Budget be the Controlling Factor.*

City Manager Tewes reminded the Council, that in regard to recommendation #6 and the project management model, the Council had adopted a recommendation that staff develop an analysis and return it for Council review in October.

City Council Action

OTHER BUSINESS:

33. APPROVAL OF THE MITIGATION MONITORING AND REPORTING PLAN FOR THE INSTITUTE GOLF COURSE (Continued from 7/21/04).
Resolution No. 5839

Planning Manager Rowe presented the staff report as provided in the agenda packet.

Council Member Carr asked who has the final authority on how the MMRP issues are to be carried out on the site.

City Attorney Leichter stated that in any Mitigation Monitoring Plan, whether it is overseen by the city or an outside consultant, the city has the ultimate responsibility for interpretation. If the city does not believe the applicant is complying with the MMRP, they would be given notice of that fact, and if they disagree they would have the right to appeal that to the Council. The Council's determination would be binding unless appealed to a court.

Mr. Rowe reported that the issue of the loss of the agricultural land was identified in the EIR as an impact that could not be mitigated, which is why it does not appear in the MMRP. The non-renewal of the Williamson Act contract was a condition of approval, and an action the Council took on July 7.

City Attorney Leichter stated that the proceeding for cancellation of the Williamson Act contract will be immediately initiated by the city.

Council Member Sellers asked, in regard to item #29, whether the restaurant mentioned is referring to the big one or the small one.

Mr. Rowe responded that it is referring to the larger restaurant. At the time this document was being prepared, it was under renovation; but they have since decided not to proceed with that.

Mayor Kennedy opened the public comment.

Mr. Steve Sorenson, speaking on behalf of the applicant, stated he had two requests for the council. He asked for applicant involvement in selection of the consultant that will be monitoring the applicant's progress in meeting the conditions of the MMRP. Secondly, he requested that the Council not penalize

the applicant if the applicant is delayed in meeting the conditions of the MMRP due to delays that occur due to other government agencies that might be involved in the process. He requested that, if the City Council does receive notice that the applicant has not completed an element of the MMRP, that they not assume the applicant has failed to operate in a forthright manner, but that the Council investigate to make sure that the non-compliance is not caused by a delay of some government agency that might be involved. The applicant intends to fulfill all of the obligations required on time; and if they are not done on time, the delay is likely going to be caused by the review of an outside agency rather than the applicant.

Mr. Randy Long, speaking for the applicant, stated he had no further comments, but was available for questions from the Council.

The Council did not have any questions for Mr. Long, and he returned to his seat.

No further comments being offered, the public comment was closed.

City Attorney Leichter responded to Mr. Sorenson's requests. She stated that the city will be selecting a consultant to oversee the MMRP because the city cannot take that task on due to work load and legal issues. While the city would be happy to receive the applicant's suggestions, she cannot advise the council that it would be prudent to allow them to have a significant say in the selection of the consultant, because the ultimate responsibility for implementation of this plan rests with the city and not the applicant. It is critical to make sure the consultant selected is acceptable to the city. The applicant will have the opportunity to educate the consultant about the unique aspects of this project; but she cannot recommend that this be attached as a condition to the MMRP. Likewise, the city would be willing to consider that other agencies might be the cause of any delay, but she cannot recommend that the MMRP be amended to incorporate that presumption.

In response to Council Member Sellers question on the matter of delays caused by other agencies and the penalties involved, City Attorney Leichter stated that there are deadlines that the applicant has accepted. In the past, when the applicant has claimed that another agency was the cause for their not meeting a deadline, the city has always followed up to investigate the cause of the delay. Staff would take such information into consideration when reporting back to the council regarding delays and whether the applicant should be penalized.

Mayor Kennedy noted that it appears the applicant is asking for clear communication between the city and the themselves, and he asked if there is going to be one central point for monitoring to keep communications open and clear between the applicant and the city.

City Manager Tewes responded that one of the requirements of the MMRP is that the applicant will provide the resources the city requires in order to hire staff to provide that ongoing monitoring. The city does not feel it is the responsibility of the taxpayer to monitor this EIR mitigation plan. The conditions of approval make it clear that the applicant will provide the resources, and the city will hire someone to do that monitoring. It is the intention of the city to cooperate in the selection of the consultant; but, the fact is, that when a contract is required to be performed by the city, it is the city that is responsible. The consultants are accountable to the city, not the applicant. He stated that, as he understood Mr.

Sorenson's request, the applicant is requesting that the city communicate with them, and that will be done.

Council Member Carr noted that the MMRP contains requirements for reporting reviews which will provide an opportunity for the applicant to explain any areas where there may be a delay. He stated that staff should make sure that those regular reviews do occur, whether they are before the Planning Commission or the Council, so that public reviews are done on a regular basis.

Action: *On a motion by Council Member Chang and seconded by Council Member Carr, the City Council unanimously (5-0) **Adopted** the Resolution. **Resolution No. 5839.***

34. ADOPT ORDINANCE NO. 1687, NEW SERIES (Continued from 7/21/04).

Planning Manager Rowe presented the staff report as provided in the agenda packet.

Mayor Kennedy opened the public comment.

No comments being offered, the public comment was closed.

Action: *On a motion by Council Member Tate and seconded by Council Member Sellers, the City Council **Waived** the Reading in full of Ordinance No. 1687.*

Action: *On a motion by Council Member Tate and seconded by Council Member Sellers, the City Council unanimously (5-0) **Adopted** Ordinance No. 1687, New Series and **Declared** That Said Title, Which Appears on the Public Agenda, Shall be Determined to Have Been Read by Title and Further Reading Waived; Title as Follows: **AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL APPROVING A ZONING AMENDMENT ON A 192±-ACRE SITE CHANGING THE ZONING DESIGNATION FROM OPEN SPACE (OS) TO PLANNED UNIT DEVELOPMENT (PUD) LOCATED AT 14830 FOOTHILL AVENUE BETWEEN MAPLE AVENUE AND ROBIN AVENUE. (APNS 825-29-002, 043, 044, 045 AND 825-30-007).***

35. ORDINANCE AMENDING THE MUNICIPAL CODE TO PROHIBIT THE POSSESSION OF IMITATION FIREARMS ON PUBLIC PROPERTY.
Ordinance No. 1693

Interim Police Chief Cummins presented the staff report as provided in the agenda packet, and displayed examples and photographs of replica guns. He also stated that the State Assembly passed a bill this afternoon restricting these guns in public, but the legislation still has to pass the Senate and be signed by the Governor.

Council Member Carr commended the Police Department for their professionalism that prevented what could have been a tragedy during the crisis last spring at Jackson Oaks School here in Morgan Hill. He stated that he believes this is a very important action for the Council to take and asked Chief Cummins how this new law would be publicized so that children and parents will become aware of it.

Chief Cummins stated that information will be placed on the city's website and taught in schools by the School Resource Officers so that the word will get out to the high school and middle school students.

Council Member Carr stated that he would make sure the members of the City/School Liaison Committee were apprised of this information at their meeting on Friday morning.

Council Member Chang asked why the Council would want to pass a law restricting someone from carrying a fake gun in public, but yet we have no such laws for real guns.

Chief Cummins stated that real guns are covered in the penal codes. He also stated that most people have an inherent sense of the danger of brandishing a real weapon in public, whereas a toy gun would not raise that natural caution; and therefore, could open the way for a dangerous and tragic situation such as occurred at the Jackson School.

City Attorney Leichter stated that this ordinance also addresses the appropriate response from the police. If the officers have to question whether the gun being brandished is real or fake, it could slow their reaction time causing them to be placed in danger; or it could cause them to think a fake weapon was real causing danger to a citizen. When a gun is being brandished in public, the police will be called, and it is imprudent to place the officers in the position of trying to decide whether the gun is real or fake. It is more prudent to prohibit fake guns in public.

Chief Cummins followed up on the City Attorney's remarks by noting that this problem only exists when these guns are in the public arena, not in someone's back yard. When they are in the public arena, they frighten the public and create a potential danger to the bearer and police officers.

Mayor Kennedy opened the public comment.

No comments being offered, the public comment was closed.

Action: *On a motion by Council Member Sellers and seconded by Council Member Carr, the City Council unanimously (5-0) **Waived** the Reading in Full of the Ordinance.*

Action: *On a motion by Council Member Sellers and seconded by Council Member Carr, the City Council **Introduced** the Ordinance, by Title Only, as follows: **AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL AMENDING SECTION 9.04.010(A) (Discharge-Permit Required-Fee) OF CHAPTER 9.04 (WEAPONS) AND ENACTING CHAPTER 9.06 (IMITATION WEAPONS) OF TITLE 9 (PUBLIC PEACE, MORALS AND WELFARE) OF THE MUNICIPAL CODE OF THE CITY OF MORGAN HILL REGARDING PROHIBITION OF IMITATION WEAPONS** by the following roll call vote: *AYES: Carr, Chang, Kennedy, Sellers, Tate; NOES: None; ABSTAIN: None; ABSENT: None.*
Ordinance No. 1693, N.S.*

36. COMMENTS FOR THE HIGH-SPEED BULLET TRAIN.

Planning Manager Rowe presented the staff report as provided in the agenda packet.

Mayor Kennedy opened the public comment.

No comments being offered, the public comment was closed.

In response to Mayor Kennedy's request for information on the Planning Commission's comments, he stated that the Commission Members had decided to submit their comments back to the staff individually, but that the Commissioners concurred with the comments that are included in the staff report this evening.

Council Member Tate stated that the city should make a strong recommendation to keep this high speed train project away from Henry Coe State Park.

Council Member Carr agreed that we need to absolutely make a strong statement about staying away from Henry Coe Park.

Mayor Kennedy suggested taking a position favoring the southern route, with a stop in Morgan Hill.

Council Member Tate stated that he was concerned about the growth inducing impact this would have on Morgan Hill.

Council Member Carr stated that the station in Morgan Hill was removed from the recommendations the last time the Council commented on this project because of the concern about the growth inducing impacts. It was decided that the impact of having a high speed train going through Morgan Hill every day would be too great, and that the northern route was the only acceptable route.

Mayor Kennedy stated that he favors a southern route through Pacheco Pass, and believes that it can be built without major adverse impacts on the city if done properly; and that it does not necessarily have to have a stop in Morgan Hill.

Council Member Sellers concurred with the Mayor on the choice of a southern route. Since it appears that the only consensus apparent tonight is that this train should not go through Henry Coe Park, perhaps that should be the recommendation that the Council should focus upon for now.

Council Member Carr stated that he is not sure we need to identify a particular route that the council prefers, but that we should give them all the potential impacts to Morgan Hill that are indicated in the staff report and very strongly voice our opposition to going through Henry Coe Park.

Council Member Chang stated that she had previously passed on to the Cities Association the Legislative Committee's recommendation of choosing the southern route without going through the Henry Coe Park, and the Cities Association had eventually taken that position.

Mayor Kennedy agreed that had occurred and he stated that Council Member Sellers statement seems to be a good starting point. A statement should be formulated that we oppose any bullet train right of way through Henry Coe Park; and that we support a southern Pacheco Pass route, as Council Member Chang pointed out we have supported in the past.

Council Member Carr noted that the previous recommendation to the Cities Association was made prior to having the draft EIR, and that the Council did not have as much information as is now available.

Action: *On a motion by Council Member Sellers and seconded by Council Member Chang, the City Council unanimously (5-0) **Directed** staff to submit the comments outlined in the staff report and add an expression of the council's strong opposition to the route of the Proposed High-Speed Bullet Train going through Henry Coe Park.*

37. APPOINTMENT TO THE CITY'S 2006 CENTENNIAL PLANNING STEERING COMMITTEE.

Mayor Kennedy noted that this process was begun at the last meeting, but some council members required some additional time to consider and make their appointments.

Council Member Sellers stated that he is thrilled to announce that Vivian Varela has agreed to be his appointee to the Centennial Planning Steering Committee, and he thanked her publicly for her willingness to serve.

Council Member Carr confirmed his appointment of Ellie Weston.

Council Member Chang confirmed her appointment of Lorraine Welk.

Council Member Tate confirmed his appointment of Janie Knopf.

Mayor Kennedy listed the full committee as Brad Jones Marilyn Librers, Jennifer Tate, Lorraine Welk, Janie Knopf, Ellie Weston, and Vivian Varela.

Mayor Kennedy stated that there is a need to appoint a two-member council subcommittee to assist this subcommittee, and he stated he would like to serve on that council subcommittee.

Council Member Carr noted that, since after November 1 there will only be two members of this current council that are guaranteed to be on the Council to serve on such a subcommittee, perhaps the Council would to delay setting up the subcommittee at this time. The other concern he raised was that when the council appointed a council liaison to the subcommittee in charge of planning the opening of the Community Center, it often happened that more than the liaison would end up attending, which required staff to post agendas for special council meetings. This was frustrating because not all council were able to attend, and it then became a matter of public record that some council were not attending meetings, which did not reflect well on their record. He stated that he takes his commitment of attending all agendized meetings very seriously, and he wants to make sure that we don't create that situation again with the Centennial planning. It was his understanding that the council was making these appointments

in order to place this issue in the hands of citizens, so as not to put more burden on staff, but the moment we put any council members on the committee such burdens are added. He also questioned whether during this first phase council members are even necessary. The Centennial Steering Committee members are charged to report back to the Council, and at that time all five members can join the dialogue and provide input to the process.

Mayor Kennedy stated that he is open to deleting the second recommendation of appointing a two-member Council subcommittee until after the November election, at which time he would like staff to bring that back before the council.

Action: *On a motion by Council Member Tate and seconded by Council Member Sellers, the City Council unanimously (5-0) **Confirmed** the Appointments of Brad Jones, Marilyn Librers, Jennifer Tate, Lorraine Welk, Janie Knopf, Ellie Weston, and Vivian Varela to the City's 2006 Centennial Planning Steering Committee.*

Action: *On a motion by Council Member Tate and seconded by Council Member Sellers, the City Council unanimously (5-0) **Directed** the City Manager to Appoint a City Staff Member to Work with the 2006 Centennial Planning Steering Committee, if Deemed Appropriate.*

FUTURE COUNCIL-INITIATED AGENDA ITEMS

1. After the November election staff is to return the item for appointment of a two-member Council subcommittee to assist the Centennial Planning Steering Committee for council consideration.

No other items were identified.

ADJOURNMENT

There being no further business, Mayor/Chairman Kennedy adjourned the meeting at 10:50 p.m.

MINUTES RECORDED AND PREPARED BY:

MOIRA MALONE, DEPUTY CITY CLERK/DEPUTY AGENCY SECRETARY